

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9353 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

NAVINBHAI THAKORBHAI RAVAL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 06/05/98

ORAL JUDGEMENT :

By this petition under Article 226 of the Constitution of India, the petitioner challenges legality and validity of the detention order dated 6.12.1997 passed by the Police Commissioner for the city of Surat invoking his powers under sec.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("the Act" for brevity), pursuant to which the petitioner is

arrested and at present kept under detention.

2. The facts which led the petitioner to prefer this application briefly stated are that against him about five cases under Bombay Prohibition Act came to be filed with Varachha Road Police Station. Without pass and permit from his possession country liquor was found and the quantity thereof was ranging from 10 liters to 259 liters. The petitioner dealing in liquor was selling and providing to different persons through different agencies as a result of which public life was considerably affected and disturbed. Mischief with the public health was played. He wanted to expand his liquor business putting people to several hazards. The Commissioner of Police - Baroda City, found that the public order was being disturbed, because whoever came in the way of the petitioner, had to lick the dust because the petitioner used to retaliate badly. He was beating, torturing, abusing, molesting and making any one to bend his way. Because of his riotous and discommodious activities, no one was ready to come forward or make statement against him. Every one was apprehending danger to his safety and feeling insecure. After considerable, persuasion, and when assurance that necessary particulars disclosing their identity would not be supplied was given, some of the witnesses came forward to state against the petitioner. After detailed inquiry, the Commissioner of Police found that nefarious activities of the petitioner shattering and battering public life and leading to anarchy were going berserk. The petitioner was required to be curbed immediately. He thought about different remedial measures available in law so as to curb his subversive activities, but the general law was found sounding dull. The only way found just and most effective was to pass the order of detention and detain the petitioner for certain times. He, therefore, passed the impugned order, consequent upon which the petitioner is at present under detention.

4. The learned advocate representing the petitioner has on three to four grounds challenged the order making submissions, but when a query was made, she tapered off her submissions confining to the only point namely maintenance of the public order. According to her, by aforesaid four complaints lodged against the petitioner, public order would never be disturbed and those cases can well be effectively dealt with under the general law. Mr. Kamal Mehta, the learned APP has supported the order. He submitted that no illegality has been committed and every thing has been done quite in consonance with law in all respects before passing the

order. According to him, this will never be the case of law and order; but certainly about maintenance of public order. He, then urged to dismiss the petition.

5. When both have confined to the only point about maintenance of the public order, I will confine to the said ground alone going to the root of the case. It may be stated what the Supreme Court has made clear on the point. In the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad City and another, 1989 SC 491, it is laid down that even if the detenu is held to be the bootlegger within the meaning of sec.2(b) of the Act, by mere that fact, he cannot be detained unless it is found that his activities as a bootlegger disturb or likely to disturb the public order. A person may be brutal or ferocious, but so long as by his acts or activities public life is not disquieted or upset, the question about the maintenance of public order does not arise. It must be shown that the people feel insecured, because the activities of that person create panic or fear in the minds of the people upsetting the tempo of life of the community. An offence if committed by the person or there may be few cases where the person might have caused harm to some one for some reason, the same will not amount to indulging in anti social activities shattering and battering public order. The same cannot be a ground to detain him. Likewise the person may be the fierce or headstrong or pugnacious or barbarous or swashbuckler or may not be afraid of Police, or may be keeping a knife or a weapon, but so long as his activities or acts do not create the feeling of insecurity or panic or terror in the public of the area in question or disturb public order he cannot be detained. Following that decision, this Court has also taken the same view in the case of Amrat Rambhai Vaghari v. Commissioner of Police, Ahmedabad and others, 1995 (2) GLH 874.

6. In this case on the basis of the aforesaid four cases, it is sought to be canvassed that by his bootlegging activities, the public order was being disturbed because at times, the petitioner was beating the people, or giving threats to them, or running amok so as to have sale of liquor smoothly, but there is nothing on record indicating that by his such acts, people were feeling insecured or he had created a panic, upsetting the tempo of the life of the community. It may, however, be stated that such few or minor incidents will not give rise to the question of maintenance of public order as made clear by the Supreme Court in the aforesaid decision. Consequently the detention order cannot be

maintained. The same being illegal is required to be quashed.

7. For the aforesaid reasons, this petition is allowed. The order of detention passed on 6th December 1997 by the Commissioner of Police, Surat City, is hereby quashed and set aside. The petitioner- detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute.

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